

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-cv-67-BO

PURYEAR TRANSPORTATION)
COMPANY, INC., PURYEAR TANK)
LINES, INC., and HAROLD A.)
PURYEAR TRUCKING CO.,)
Plaintiffs,)
v.)
UNITED STATES OF AMERICA,)
Defendant.)

ORDER

This cause comes before the Court on the government's motion [DE 33] for the Court to vacate its previous order partially denying the government's motion to dismiss.

On August 27, 2019, the Court granted in part and denied in part the government's motion to dismiss plaintiffs' claims. DE 19. The Court dismissed the claims of Puryear Transportation Company and Puryear Tank Lines but denied the motion with respect to Puryear Trucking. The government moved for the Court to reconsider its order. The Court denied this motion in November 2019. In December 2019, the government received notice of a state court judgment that potentially has preclusive effect in this case on issues favorable to the government.

The government filed the instant motion on January 29, 2020, again asking the Court to change its August 2019 order. In the motion, the government represents that although the parties have agreed to resolve the case, the government would not support a dismissal by Puryear Trucking under Federal Rule of Civil Procedure 41(a)(1)(ii) until after the Court disposes of the instant motion.

The Court will not vacate or alter its August 2019 order. The parties should either stipulate to a dismissal under Rule 41(a)(1)(ii) or Puryear Trucking should move for voluntary dismissal by court order under Rule 41(a)(2). Otherwise, the parties should file their Joint Discovery Plan by March 31, 2020.

The Government's motion to vacate [DE 33] is DENIED. The motion for extension of time to file a joint discovery plan [DE 31] is DENIED AS MOOT.

SO ORDERED, this 5 day of March, 2020


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE